IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1290 OF 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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MOHAMAD KAMIL AHMEDMIYA SHAIKH & ANR. - Appellant(s)

Versus

UNION OF INDIA - Respondent(s)

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Appearance :

MR. D.N. PANDYA for Appellant(s) : 1 - 2.
MR. MUKESH A. PATEL for Respondent.
MS. MEGHA JANI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 05/09/2005

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The parties are heard.

2. The present appellants submitted an application to the Railway Claims Tribunal, for Gujarat State, at Ahmedabad

Bench, which was registered as Miscellaneous Application No.MXO100012, submitting, *inter alia*, that on 12th March, 1999, their son, Mohammad Abid Shaikh, was traveling as a *bona fide* passenger in the concerned train with Railway Ticket No.82134328 from Surat to Vapi in Memu Train No.742 UP and because of heavy rush in 2nd Class compartments, the deceased was standing near the entrance gate of the boggy and all of a sudden, in the unfortunate accident, because of a jerk, he fell from the boggy and died. It was submitted that the appellants were entitled to claim compensation under the provisions of the Railway Claims Tribunal Act, 1987. It is not denied before us that the application, seeking compensation, was to be made within one year, but, the present application was made with a delay of more than 15 months. The application for condonation of delay was also made with the submissions that because of the death, the appellants suffered a mental shock and they were under the impression that the period of three years' limitation would be applicable to the matter, as applicable to ordinary money suits. It was also submitted that the principle of law is that a case, which is good on merits, should not suffer because of some delay.

3. The application was opposed by the Railway Administration. After hearing the parties, the Bench of the learned Tribunal rejected the application, observing that appellant No.1, being an Advocate, cannot be allowed to say

that he did not know the law. At the same time, being influenced by the period of delay, the learned Tribunal rejected the application.

4. Learned Counsel for the appellants submits that Section-17 of the Railway Claims Tribunal Act, 1987 (“the Act” for short) is an enabling provision and is required to be liberally construed, especially, in a matter where the appellants' have lost their young son. His submission is that though appellant No.1 is an Advocate, but, it cannot be gainsaid by the other side that he is practising at Muffassal level. It is also submitted that the Tribunal was required to look into the provisions of law and if a practising Advocate fails to appreciate the legal provisions, then, the cause for condonation of delay would be available in favour of the appellants.

5. Section-17, which comes under Chapter-IV of the Act, provides that the Claims Tribunal shall not admit an application for any claim within the period of limitation, as provided under the law, but, sub-section (2), which virtually is an enabling provision and can be read as a proviso to sub-section (1)of Section-17, provides that notwithstanding anything contained in sub-section(1), an application may be entertained after the period specified in sub-section (1) if the applicant satisfies the Claims Tribunal

that he had sufficient cause for not making the application within such period.

The applicant before the Railway Claims Tribunal is required to satisfy the Claims Tribunal that he had a sufficient cause for not making the application.

6. In the present matter, appellant no.1, the father, who is a practising Advocate, and appellant No.2, who happens to be a housewife, submitted to the Court that they were under a *bona fide* belief that the limitation would be three years, as is applicable to the ordinary money suits. The question that whether their impression was *bona fide* or not had to be decided on the strength of the submissions made by the appellants and not on the basis of the objection raised by the Railway Administration or on the strength of the understanding of the Court. In the present matter, the appellants had given particular reasons for condonation of delay. In our considered opinion, if a Lawyer makes a wrong in case of his client, then, such of wrong would not be allowed to come in the way of his client, and if the same principle is allowed, then, the wrong committed by the husband-Advocate, would not come in the way of the appellant-wife. If delay in favour of one of the appellants is condonable, then the same is to be condoned in favour of everybody.

7. For the reasons aforesaid, we are of the opinion that the delay in filing the application deserves to be condoned. The learned tribunal was not justified in rejecting the application for condonation of delay. The application is allowed. The delay in submitting the compensation application is condoned. The matter is remitted to the learned Tribunal with a direction to decide the matter after giving due opportunity of hearing to the parties, in accordance with law, preferably within four months from the date of the appearance of the parties.

The parties present in the Court shall appear before the learned Claims Tribunal, on 10th October, 2005.

Accordingly, the appeal stands allowed.

Direct Service is permitted.

[***R.S.Garg, J.***]

[***K.M. Mehta, J.***]

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